

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1248

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P95

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

v.

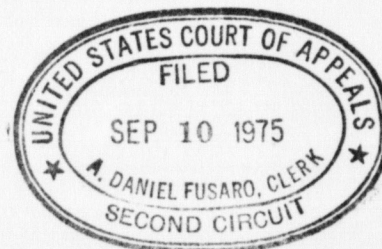
JOSEPH GENTILE and ERNEST LaPONZINA, APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT APPENDIX

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avoided."

We know you all have experiences in life and these compartments in our brain store them up at some future date, or even during the course of this trial, something may come up which may recall an incident you had long forgotten about. As long as we are aware of it we will be able to render fair and impartial verdicts.

Now, what is this case all about? You will see the scenario, the fiction. Who is the star of this play? Tsotsos. He staged it. He is the principal actor. He is the author. He prepared the script. When you hear the tapes and you listen to the words coming out of his mouth trying to steer my client unwittingly into admissions, but failing to do so.

The credibility of the witnesses are of the utmost importance. When he takes the stand -- and merely because he works for the Government does not give him anymore credibility than an ordinary citizen who works for a private concern. Ask yourselves whether he had an inordinate desire to convict. Ask yourselves whether he obeyed the regulations laid down by his department. Ask him whether he went above

1 understand. What do you mean? Do you mean you want
2 to give me money?" I want you to say that. Wouldn't
3 you try to get it down? That's your purpose. In
4 other words that's what you're there for. It is
5 not down there. Do you mean to tell me this agent
6 was so inept that he will let them go with gestures?
7 No, he couldn't get them in direct conversation to
8 commit themselves to a bribe because they weren't
9 bribers. So what does he do now -- the tapes are
10 not sufficient -- what they did was they did this --
11 how do you combat that when someone says you did this
12 (indicating). The Government's case is put together
13 with rubberbands and saliva. It is like somebody
14 trying to make a Pizza with not enough dough. It
15 stretches and it stretches and it still won't cover
16 the situation.
17

18 We don't have any prior propensity on the part
19 of Mr. LaPonzina to bribe anybody. The testimony
20 will show that he had a prior tax audit, civil and
21 criminal. He never bribed. You're going to bring
22 these people in here. They will testify, the
23 Government agents, that they closed him out. He
24 made this track before. He was around the track.
25 He never had a bribe. He knows what it's all about.

1 (The jury entered the courtroom at 11:55 a.m.)

2 THE COURT: All right, are we ready to start?

3 Your first witness, please.

4 MR. BARLOW: Yes, your Honor.

5 The Government calls Nicholas Tsotsos, sir.

6 N I C H O L A S T S O T S O S , having first been duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARLOW:

10 Q Mr. Tsotsos, how old are you?

11 A 33.

12 Q Can you tell us what your education is?

13 A I am a graduate of the University of Denver with
14 a B.S., B.A. degree in accounting.

15 Q What do you do for a living?

16 A I am a special agent with the Intelligence
17 Division of the IRS.

18 Q How long have you been so employed?

19 A Six years.

20 Q What did you do before that?

21 A I was a REvenue Agent in the INternal Revenue
22 Service in the Audit Division for approximately three years.

23 Q Can you briefly tell us what the duties of a
24 special agent in Intelligence are?

25 A One of my functions as a special agent is to

investigate the possibility of criminal violations of the Internal Revenue laws.

Q Now, how many cases or how many investigations have you taken part in as a special agent in the Intelligence Division?

A I have had approximately 15 cases personally assigned to me, however, I worked on approximately 50 cases that were assigned to other agents.

Q Now, did there come a time when you were assigned an investigation concerning Joseph Gentile?

A Yes.

Q Can you tell us what kind of an investigation that was?

A It was a criminal investigation, a tax evasion.

Q Can you tell us the difference if any between a criminal investigation and a civil tax audit investigation or examination?

A Well, a civil examination involves determining the civil tax liability.

Now, in a criminal case in Intelligence investigation, this usually involves going to three parties, such as banks and brokerage firms and interviewing third parties such as customers, clients and other witnesses.

Just about any institution or any person who

1
2 Q Did you mention anyone else in connection with
3 your investigation during this conversation?

4 A Yes.

5 I again talked about the checks which totaled
6 approximately \$20,000 which I said he had cashed through
7 Lucadana and I asked Mr. Gentile for an explanation and at
8 first he denied that he had cashed any checks and then he said
9 that there were some checks that he cashed through Lucadana,
10 just a few, and that he cashed these checks as favors for
11 other people.

12 Q What records if any did Mr. Gentile say he had
13 at that time -- question withdrawn.

14 Do you remember about how long that telephone
15 conversation lasted?

16 A About 45 minutes.

17 Q Now, when is the next time you saw Mr. Gentile?

18 A I saw him May 30, 1970 -- excuse me, I have a
19 correction, December 30, 1971.

20 Q Where did you see him?

21 A At a restaurant called Peter Luger's in
22 Brooklyn.

23 Q Do you recall what time of the day or night
24 that you saw him?

25 A It was in the evening.

1
2 Q Can you identify Mr. LaPonzina?

3 A That is the gentleman with the brown jacket and
4 glasses.

5 MR. BARLOW: Please have the record indicate
6 the witness identified Mr. LaPonzina.

7 Q When were you assigned that investigation?

8 A It was in May of 1972.

9 Q You said that you met Mr. Gentile May 30, 1972.

10 Where were you that day?

11 A I was in Mr. Lucadana's office at that time.

12 Q Where is that office located?

13 A It is a real estate office called Fort Way
14 Realty, the address is 7502 13th Avenue in Brooklyn.

15 Q What, if anything, did Mr. Gentile say to you
16 that day about your investigation?

17 A He urged me to be fair and objective in the
18 treatment of his case.

19 Q What is the next time you saw Mr. Gentile, or
20 when was the next time you saw Mr. Gentile?

21 A June 12, 1972.

22
23 (continued next page)
24
25

JK 1
R1 2 Q And would you tell us how that meeting came
3 about?

4 A I telephoned Mr. Gentile for an appointment.

5 Q Where did you telephone him from?

6 A I called him from the office of the Regional
7 Inspector.

8 Q And what, if anything, was done in your presence
9 before you made the telephone call?

10 A I attached a recording device on the telephone.

11 Q Was that conversation actually recorded?

12 A Yes, it was.

13 Q Now, where did you meet Mr. Gentile on June 12,
14 1972?

15 A I met him at the Rocket of New York at
16 560 Seventh Avenue, Brooklyn.

17 Q And can you tell us what you talked about in the
18 Rocket -- by the way, was there anyone there with him or was he
19 in the Rocket by himself?

20 A He was there by himself.

21 MR. KLEIN: Your Honor, may we have another
22 instruction at this point?

23 THE COURT: Yes. Well, no.

24 BY MR. BARLOW:

25 Q What, if anything, did you do before you went
to the Rocket that day?

1
2 A I went to the office of the Regional Inspector
3 where they equipped me again with a transmitting device.

4 Q Now, when you got to the Rocket of New York, what
5 did you talk about initially?

6 A We talked about several things. We talked about
7 the checks that he had cashed through Vincent Lucadana, which
8 I said approximated between 17 and 20 thousand dollars; we
9 talked about the numerous checks that he had deposited to his
10 checking account; I pointed out to Mr. Gentile that in his
11 tax returns he reported an average of \$6,000 a year and I said
12 he spent twenty to twenty-five thousand dollars a year, and I
13 asked him for an explanation. I questioned him about checks
14 that I said he had cashed at a check-casher during the years
15 under investigation.

16 Q What, if anything, did Mr. Gentile say about the
17 checks deposited to his account?

18 A He said the checks deposited to his account were
19 exchanges, that 90 per cent of the checks were exchanges, that
20 he cashed checks for friends.

21 Q What, if anything, did he say about the course
22 of your investigation?

23 A He said that everywhere I had been every person
24 I contacted where I made myself known had reported back to him
25 so he knew everywhere I had gone during this investigation.

1
2 Q Did you ask him anything else about the checks?

3 A Mr. Gentile told me that the checks deposited to
4 his checking account were exchanges, that he had cashed checks
5 for friends.

6 I told him, "Well, then, make your cancelled
7 checks available to me, in this way we can establish the truth."

8 And he said that he didn't have them.

9 Q Now, did you mention anyone else in connection
10 with the investigation?

11 A Yes. I asked him about Frank Coppa Frank Coppa
12 had been the man I had gone to the restaurant with on December 30
13 when we ran into Gentile, and I asked Mr. Gentile, "Mr. Gentile,
14 what is Frank Coppa's interest in this case?"

15 Mr. Gentile told me about the time on September 8,
16 1971 when Special Agent Farrell and I had just left that
17 Frank Coppa and another man came in and he asked them to be
18 excused because two investigators had just left, and he had
19 written down our names and he showed my name and Farrell's
20 name to Frank Coppa, and Frank Coppa said he knew me, and he,
21 Mr. Gentile, said, "I never told Frank Coppa to see what he
22 could do for me."

23 Then I asked Mr. Gentile, "What did he ever say
24 to you about me?"

25 And Mr. Gentile said, "The honest truth is he

1
2 said, 'Joe, don't try to give him anything, because he is a man
3 for his job,' and that is it."

4 I asked Mr. Gentile, I asked him if he thought
5 the meeting at Peter Luger's was more than just a coincidence,
6 and Mr. Gentile said, "What are you trying to say, that it was
7 a plot or something?"

8 He said, "If that is what I had in mind I would
9 have told Frankie when I first realized that he knew you to
10 get ahold of you to see if we could do something here. I
11 didn't have to have you meet my family at the restaurant. I
12 could have done it differently, I could have told Frankie, 'Go
13 to him and see what we can do over here and if we can do some-
14 thing we will come up with something and we will make everyone
15 happy.'"

16 Mr. Gentile said, "It wouldn't make sense to do
17 it the other way, had you meet my family at the restaurant, I
18 could have done it that way. Isn't it better? If that is,
19 if that is what you are talking about," he said.

20 Q After you had finished talking about Mr. Coppa,
21 what, if anything, did you talk to him about concerning the
22 checks?

23 A We went over again the checks that he had
24 deposited to his checking account, and Mr. Gentile said, "If
25 you were to show me some of these checks, maybe I could
explain them."

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Q Now, for the record, can you tell us in inches,
how --

4

5

6

A It is a little bigger than a pack of cigarettes.
I wore this Kel-transmitter below my beltline, as I
said, in this area (indicating) approximately that would be --

7

8

Q You are showing the jury the approximately location of your front right-hand pocket?

9

10

11

12

A To the right of the abdomen, I would say.

And the Kel-transmitter has a microphone that runs up,
the wire runs up along my stomach and to my chest up to about
this area here (indicating) which would be where my lungs are.

13

14

15

16

(The witness then sat in the witness chair).

A That is under my shirt.

15

16

Q Now, what if anything, did you take with you when
you met Mr. Gentile on June fourteenth?

17

18

A I took photocopies of checks that he had been
depositing to his bank accounts.

19

20

21

Q And is there any reason why you took these?

A Well, he had asked me on June 12, if I had the
checks to show him, so he would clarify them to me.

22

23

Q How many photocopies of checks did you take
with you that day?

24

25

A I had about fifty.

Q And what did you begin talking about that day,
on June 14th?

1
2 A I started showing Mr. Gentile photocopies of
3 checks that had been deposited to his bank account, and I
4 told him after eliminating the non-income items, I would be
5 still left with a wide discrepancy.

6 He said, "Maybe I did something wrong, but how bad is
7 it? So many people are cheating the Government, paying
8 accountants huge sums of money to cheat the Government," and
9 Mr. Gentile couldn't understand why we were not arresting them
10 or was this, as he said, "Is something being done around the
11 circle?"

12 And that reminded him of what he said to me on June
13 12, regarding the meeting at Peter Luger's with Frank Coppa.
14 He said, "You asked if that was a coincidence, or a planned
15 thing?"

16 This is Mr. Gentile talking now.

17 "If it was a planned thing, if it was a planned thing,
18 I would tell Frankie, 'If you can get your friend, you know
19 him that well, get your friend, see what there is over here.'"

20 Maybe I did make a mistake, maybe there is something
21 he should come up with, see what we can do together.

22 Mr. Gentile went on to say, "Did I have to get dressed
23 and did you have to meet my family? I could have done it
24 different, if I wanted to get to you, but that is not my way,"
25 he said, "That is not my way, and that is a lot of people's
way, see if you know that Judge? See if you know that Cop?"

1
2 See if you know that lawyer?'"

3 This, Mr. Gentile said, has been going on before we are
4 born, and will continue after we are dead.

5 "This," he said, "was a way of life. Now, I am not
6 against it," he said, "providing no one gets hurt."

7 He went on to tell me that there were people who didn't
8 know how to do their job. He said, "These people know how
9 to do their job one way, and that is it, and they are trying to
10 do an honest job, but there are those who say, "This is no good,
11 this is no good, you are stepping on people's corns, it's not
12 healthy, the circle has got to keep going. I have an obliga-
13 tion to you, you have an obligation to me.

14 "Now, will you please stop it, if you don't know how to
15 do your job well, get someone who does."

16 And I said, "I don't understand what you are talking
17 about."

18 And Mr. Gentile said, "It's more important for you to
19 know these things, Coppa, in other words Coppa cannot be
20 honest, you see what goes on and the ones that are walking the
21 cemeteries, that is for dead people."

22 I said, "Well, you are not penetrating me."

23 Mr. Gentile, Mr. Gentile said, "Someday you are going to
24 know what I am talking about, some day, because it goes on
25 every day."

(112)

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And I said, "What is that?"

And Mr. Gentile replied, "Corruption, corruption goes on every day."

And I said, "Well, how does that relate to us."

And Mr. Gentile said, "It doesn't relate to us, I am just talking about these things."

I started showing Mr. Gentile photocopies of the checks that he had deposited to his savings account at the Hamilton Federal Savings & Loan .

Q Do you remember any of these checks specifically?

A The first check was a check drawn on an account in the name of the Coin Gallery, and the payee of the check was Ted Smith, and I showed Mr. Gentile, this photocopy that I obtained from the bank pursuant to a subpoena. Actually, it is called a summons, but it is the equivalent to a subpoena.

And I asked Mr. Gentile to identify the check, and he said, yes, this was his check, he identified his endorsement on the back.

He said he didn't know Ted Smith, but later on he said he had a vague recollection of a Ted Smith.

The second check I showed him was a Texaco check made payable to the order of Dennis Flynn, and again, I asked Mr. Gentile to identify his indorsement on the back, and he said, "Yes, that is my signature, that is my indorsement."

1
2 And the first -- well, at first, -- wait, in this
3 instance, with respect to Dennis Flynn, he didn't know him.

4 Now, a third check which was a Guardina and Sons check
5 made payable to the order of Sigurd Gunderson. I again showed
6 him the check, he identified his signature, his endorsement
7 on the back, and he said that he may know Gunderson, but later,
8 he admitted he didn't know him.

9 Q Now, what did you do with the photocopies of
10 these three checks after you left Mr. Gentile that day?

11 A I retained them, I kept them, I put them in my
12 file.

13 MR. BARLOW: Will you mark these for identifica-
14 tion as 20, 21 and 22?

15 THE CLERK: Document marked for identification
16 as Government's Exhibit 20, another document as 21,
17 and a third as 22.

18 THE COURT: Yes, sir?

19 MR. SCHETTINO: If your Honor please, on the
20 question of the introduction of these checks, I don't
21 see the relevancy. We are not trying a tax evasion
22 case, this is --

23 MR. BARLOW: If we are going to have an objection,
24 I think we ought to have it at sidebar, I would ask
25 for a sidebar.

1
2 tax evasion case, because on the same theory, why
3 not put in the man's bank statements.

4 THE COURT: Well, it does come in, when the
5 bribe is being discussed, he has already related it
6 to the bribe.

7 MR. SCHETTINO: Except, I respectfully submit,
8 it becomes prejudicial. Mr. Barlow is planting in
9 the jury's mind, that here is the man that is not
10 reporting income, he is hiding money. What does that
11 have to do with the bribery?

12 I am not going to defend him on both actions
13 in one case. I submit that this presentation is going
14 in.

15 THE COURT: I will allow this in at this point,
16 and if they are not materially connected, I will
17 strike them.

18 MR. BARLOW: All right.

19 Thank you, your Honor.

20 (Continued on next page.)
21
22
23
24
25

EK:MM
3/3

Tsotsos-direct

135

(The trial then proceeded within the hearing
of the Jury.)

BY MR. BARLOW:

Q Agent Tsotsos, can you look at Government's
Exhibit 20, 21, and 22 for identification and tell us whether
you can identify those exhibits?

THE COURT: While you are doing that, I want
to say to you that in this case you must continue to
remember throughout the entire case that it is not
a case of tax evasion or failure to pay taxes, this
is a case involving a question of corrupting a public
official or bribery, and you must keep that in mind
at all times.

There are related issues which we call collateral
issues, but the real issue is whether or not this
agent was corrupted and bribed by this defendant, and
at this time it is Mr. Genitle whom we are talking
about.

All right, Okay.

MR. BARLOW: Thank you.

BY MR. BARLOW:

A Yes, I can identify them.

Q And what are those three exhibits?

A These are the photocopies of checks that I

2 had shown Mr. Genile.

3 MR. BARLOW: At this time, your Honor, I would
4 ask that Government's Exhibit 20, 21, and 22 inclusive
5 be allowed in evidence.

6 THE COURT: I will allow them at this time.

7 MR. SCHETTINO: You will note my objection.

8 THE COURT: Yes, I will note your objection.

9 THE CLERK: Government's Exhibits 20, 21 and
10 22 previously marked for identification, now received
11 in evidence.

12 MR. BARLOW: Your Honor, may I show the Jury
13 the exhibits.

14 THE COURT: No, not at this time because of my
15 ruling.

16 BY MR. BARLOW:

17 Q Now, after you had shown Mr. Gentile the three
18 photocopies of the checks, what if anything did you say about
19 any relationship between the three checks?

20 A I brought this up later on in the conversation,
21 there was something that preceded that, at that point --

22 Q Okay, what if anything did you say next, then?

23 A I told Mr. Gentile that there was another in-
24 dividual who was picking these checks up for him and taking
25 them to a a check casher and cashing them for Mr. Gentile.

1
EK:MM 2 Q Agent Tsotsos, going back to your answer to
TlR3 3 Mr. Gentile, had you in fact done something like this before?

4 A Never.

5 Q Now, what was your reply when Mr. Gentile --
6 what was your reply if any when Mr. Gentile said,-- when
7 Mr. Gentile said, "Now, you want me to make you an offer?"
8 What was your reply, if any?

9 A He said, -- I didn't reply to that, he said to
10 me, "So you want me to make you an offer?"

11 And I said, "Yes."

12 And he said, "Well, all right. Do you have any
13 idea what is reasonable?"

14 Q What did you do, what did you do at that time?

15 A At that point I wrote the figure \$3,000 on a
16 slip of paper that was on his desk and I pushed it over to
17 him, and he picked it up and looked at it and he said, "Now
18 here is what you are going to do for the criminal and the
19 civil, right?"

20 And I said, "Right, but there would be a little
21 civil tax because I had to cover myself."

22 And Mr. Gentile said, "No, no, no, no, no, no,
23 that is all right, that is all right, I'm glad you are talking
24 to me this way. Don't talk to me like you put doubts in my
25 mind, don't make the same mistake again."

1
2 He went on to say, "I'm taking it for granted
3 that I am dealing with the right person and as God is my
4 judge I made the decision in my own mind."

5 He went on to say, "My only resolve is how I'm
6 going to give it to you."

7 I said, "If you are talking about the money,
8 why don't you just hand it to me?"

9 Mr. Gentile said, "If you are talking about the
10 money, if you are talking about the money it's not the money,
11 I'm always worried about one thing, 'am I doing business
12 with the right person?' That is all I worry about."

13 He went on to say, "I'm not concerned about
14 whether you can deliver, I'm not concerned about the money,
15 I just don't want you to report this to anyone, I don't want
16 anyone to know about this."

17 And I said, "Well, I feel the same way, too."

18 He said to me, "And I don't want you to get
19 hurt. I asked you if this could be done and whether you
20 could do it and you said yes, I asked you if you were worried
21 about doing it, and you said no, I asked you if you had done
22 it before and you said yes."

23 "Well, of course I didn't want to hear that,
24 and you know why I didn't want to hear that."

25 Then I said, "Yes, I realize you are telling

1
2 me for my own good I made a mistake."

3 Then Mr. Gentile said, "When do you want this?"

4 I said, "Well, how about tomorrow?"

5 He said "You want it that fast?"

6 I said, "Well, tomorrow if that is okay?"

7 And he said, "No, that is all right, and you
8 are coming here tomorrow to ask me more questions, right?"

9 I said, "Right."

10 He said, "Okay, tomorrow at 10:00 o'clock."

11 He said, "I may be blowing it the way I'm giving
12 i t to you but I am taking it upon myself that I doing busi-
13 ness with the right person.

14 "Usually in cases like this it is smarter to
15 have someone else hand it to you."

16 At this point he asked me if I had anyone else
17 at my end that I had to take care of, and I said, "No, the
18 agents who work with me don't know anything in the case,
19 they don't know anything about the case."

20 And he said, "Oh, other agents are allowed to
21 work on your case?"

22 And I said, "Yes, and sometimes I work on their
23 cases, too."

24 And Mr. Gentile replied, "Very interesting,
25 very interesting."

He said, --

MR. SCHETTINO: Judge, again, I hate to interrupt, but would you instruct the witness to keep his voice up.

THE COURT: Keep your voice up.

THE WITNESS: Shall I repeat that last part?

THE COURT: Yes, yes.

9
MM fls

(Continued on next page.)

mm/nc
2dm2

Tsotsos - direct

161

DIRECT EXAMINATION

BY MR. BARLOW: (Cont.)

A When I told Mr. Gentile that agents worked on my case and I worked on their cases, his reply was, "Very interesting, very interesting."

At this point we shook hands and Mr. Gentile said, "I hope this handshake is good for both of us, for a lot of years."

I said, "I hope so, too."

And before ending the conversation that day, toward the very end of the discussion, Mr. Gentile said, "By the way, I do have those checks you wanted, those cancelled checks, but I won't give them to you."

Q Now, sir, did Mr. Gentile say anything else regarding Mr. LaPonzina that day, June 14th?

A I don't recall.

Q Is there anything that would help you refresh your recollection?

A The transcript.

Q For the record, I am showing Agent Tsotsos Exhibit 3B, for identification, and specifically page 48.

Could you look at Page 48 and see if that refreshes your recollection about any other conversation regarding Mr. LaPonzina?

2

Tsotsos - direct

A Yes, it does.

MR. KLEIN: May we have a voir dire on the question of refreshing his recollection at this point?

THE COURT: After reading that did it refresh your recollection?

THE WITNESS: Yes.

THE COURT: And did you have a recollection to refresh?

THE WITNESS: Yes.

MR. KLEIN: May I ask him one or two questions on it?

THE COURT: Goahead.

VOIR DIRE EXAMINATION

BY MR. KLEIN:

Q When did you see that transcript of June 14, last?

A Not too long ago.

Q Would you say you saw it during the intermission just before the jury came back?

A Yes, I did.

THE COURT: That is not voir dire.

MR. KLEIN: I beg your pardon, your Honor. I am sorry.

DIRECT EXAMINATION

BY MR. BARLOW: (Cont.)

Q Did you read all the pages --

THE COURT: What are you doing? I just stopped Mr. Klein. Are you going to do that?

MR. BARLOW: I am sorry, your Honor.

Q Do you remember anything else that Mr. Gentile said about Mr. LaPonzina that day?

A Yes.

Q Tell us what it was?

A "As far as Ernie, I will get you an appointment with him, but I am not going to tell him don't worry about it or anything like that" and then he asked me what I had on him.

He said, "You don't have anything on him like you had with me."

Q Now, after you left Rocket of New York, on that day, June 14, where did you go after you left Rocket of New York on that day?

A At a predetermined rendezvous at 39th Street between Sixth and Seventh Avenue.

Q By the way, is this where you rendezvoused after all these meetings that you are talking about?

A Yes.

4 Tsotsos - direct

Q And what happened when you got to that rendezvous place?

A One of the inspectors turned off my transmitter.

Q When had the transmitter been turned on on that day?

A In the Office of the Regional Inspector. When they turn it on, they take it down.

Q And after this conversation did you listen to a tape recording of that conversation, June 14th?

A Yes.

Q Do you remember when you listened to it, first?

A No, I don't.

Q Can you fix the time when you first listened to it by any other events concerning this investigation?

A Well, I listened to the tapes before appearing before the Grand Jury.

Q When did you appear before the Grand Jury in this investigation, the first time?

A I am not sure. I think it was September or October of 1972.

Q And did there come a time after you testified in the Grand Jury that you listened to the tape recording conversation again?

5

A Yes.

Q And what was that in connection with?

A When I was working with the transcripts.

Q And can you tell us what you did with the transcript of the June 14, 1972 conversation?

A At the same time I'd like to clarify something I had said earlier about the June 12 transcript.

Q Go ahead.

A When I worked with the November 30 transcript, I did that one from scratch but the June 12 and June 14 transcript had been transcribed by someone else initially and I was working with the draft, what I was doing in effect, was correcting it.

Q Do you remember when you did this correcting and revision of the transcript?

A I started in December of 1972.

Q Do you remember about when you -- withdrawn.

Do you remember about how many days you worked on the transcripts in the various conversations that you testified to?

A I don't remember the exact number of days but there were quite a few days.

Q Agent Tsotsos, I am handing you again Government's Exhibit 3B for identification.

1
2 Can you look through that transcript and
3 tell us whether Government's Exhibit 3B is an accurate
4 transcript and reproduction of the conversation you had
5 with Mr. Gentile on June 24th, 1972?

6 MR. KLEIN: I object. It's like asking a
7 man to certify his own check. It calls for a con-
8 clusion.

9 THE COURT: Rephrase your question.

10 Q Can you look through the transcript and tell
11 us how it compares with the conversation you had with
12 Mr. Gentile on June 14, 1972?

13 MR. KLEIN: I object to that, also. It is
14 calling for a conclusion.

15 THE COURT: Rephrase it again.

16 Q In what way, if any, does Government's
17 Exhibit 3B differ from the conversation you had with
18 Mr. Gentile on June 14, 1972?

19 A Is this the complete transcript -- this isn't
20 the deleted one, is it?

21 MR. KLEIN: If your Honor please, I object to
22 the witness asking the prosecutor questions.

23 THE COURT: Yes. You just answer questions.

24 THE WITNESS: Your question again.

25 Q As to the conversations relative to this

investigation, can you tell us in what way, if any, the transcript you have before you differs from the conversation you had with Mr. Gentile on June 14th, 1972?

MR. KLEIN: Isn't this invading the province of the jury? Aren't they the judges as to whether it differs or not, differs from his version or not?

THE COURT: They will never know if it differs or not unless he says so.

THE WITNESS: It doesn't differ.

THE COURT: It doesn't differ.

Q Excuse me, what was your answer?

A It doesn't differ.

Q Now, after you had made the transcript, Government's Exhibit 3B for identification, did you compare it with anything thereafter?

A Yes, I compared it with the original, or what was purported to be the original.

MR. KLEIN: Original tape or original transcript?

MR. SCHETTINO: Original what?

THE WITNESS: Original tape recording, your Honor.

Q I show you Government's Exhibits --

MR. KLEIN: May I ask one question to clarify

1
2 this: How many original tape recordings were there
3 of this particular incident? How many receivers were
4 there?

5 THE WITNESS: They made several original
6 tape recordings.

7 MR. KLEIN: I object unless we know which
8 one, whether it's selective transcripts that we
9 have here.

10 MR. SCHETTINO: I would join with that and I
11 certainly think --

12 MR. BARLOW: I ask that any legal argument
13 be out of the hearing of the jury.

14 THE COURT: All right. Come side bar.

15 (Side-bar discussion follows.)

16 MR. KLEIN: As I understand it, your Honor,
17 this is a Kel Transmitter and that's all he wore on
18 him. But the agents in the car each had a receiver
19 and they each controlled their own receiver and
20 in several instances we have more than one recording,
21 we have one to three original recordings.

22 I don't know which one he compared it with:
23 whether he took it from one and compared it with
24 another or whether he discarded one and matched it
25 with one that he wanted it to come out with his

1 A Yes, that's right.

2 Q And you, thereafter, listened to Government's
3 Exhibits 2-1 and 2-2?
4

5 A That's right.

6 Q And are all three of these items, Governemnt's
7 Exhibit 2B and 2-1 and 2-2 fair and accurate reproductions
8 of your conversation with Mr. Gentile on June 12, 1972?

9 A Yes, it is.

10 Q On June 14, 1972, what, if anything, did you say
11 to Mr. Gentile about another meeting?

12 A We had arranged or agreed to meet each other
13 the following day.

14 Q Where had you arranged to meet?

15 A At the Rocket of New York.

16 Q Do you know what the meeting was arranged for?

17 A I think it was for 10:00 o'clock in the
18 morning.

19 Q Did you, in fact, go to the Rocket of New York
20 the next day, June 15th?

21 A Yes.

22 Q Can you tell us what you did before you went
23 to that meeting?

24 A I went to the office of the Regional Inspector
25 26 Federal Plaza, where they again equipped me with a

Q By the way, was that true for all of the meetings that you had with Mr. Gentile?

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Tsotsos - direct

241

A Yes, it is.

Q Can you tell us who was there, if anyone,
when you got to the Rocket of New York that day?

A Mr. Gentile was there alone.

Q Do you remember where he was?

A He was standing in the middle of the office
which had boxes and he was going through some cassette tapes
and he had one in his hand as I walked in and we spoke
briefly about those tapes.

Q After that discussion, what, if anything,
did Mr. Gentile do?

A He motioned over to his desk in this
manner (indicating).

MR. BARLOW: Let the record indicate that
Agent Tsotsos pointed with his outstretched arm
with his pointer finger extended and drew it back
into a fist.

Q After Mr. Gentile did that what did you do?

A I walked over to his desk, opened his right-
hand drawer and in the left-hand corner I found the money
which had been folded in half and I placed into my inside
pocket.

Q Did you look up while doing that?

A Yes, and he was looking at me.

Q What did you do after you put the money into your pocket?

A I hadn't counted it. I placed it into my pocket as I said and I walked over to Mr. Gentile and we shook hands.

Q After that happened, did you have a conversation with Mr. Gentile that day?

A Yes, I told Mr. Gentile that I had a case on Ernest LaPonzina and I didn't have anything on him yet, and that I wanted to interview him.

Mr. Gentile said that he had been with Mr. LaPonzina the night before and they had discussed his -- that is Mr. LaPonzina's -- tax situation.

Mr. Gentile said that Mr. LaPonzina would not talk to me and I said, well, that's all right, what can I do? Mr. Gentile said that it would be better this way, that it would be better for Mr. LaPonzina not to talk to me and if I wanted to talk to him that Mr. LaPonzina would have me speak to his attorney and I said, all right.

Mr. Gentile said otherwise it wouldn't look good. He went on to say, because I don't want to lose you on any stupid thing. He said he didn't think we should be seen together too often that it might rouse suspicions.

Q During your conversation with Mr. Gentile,

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2 4 is the second tape recording that Agent Tsotsos testi-
3 fied to, and Government's Exhibit 4-B, now in evidence,
4 is a transcript which he had prepared and compared to
5 Government's Exhibit 4.

6 THE COURT: Mark it into evidence.

7 MR. KLEIN: I would object unless that represents
8 all the recordings that were made that day.

9 THE COURT: Does it represent all the recordings
10 that day, or just the transcript?

11 MR. BARLOW: Again, I would ask that Mr. Klein
12 wait until the witness has testified and that evidence
13 comes in.

14 MR. KLEIN: Your Honor --

15 MR. BARLOW: If there is going to be any further
16 discussion, could we have a side bar?

17 THE COURT: Mark it into evidence.

18 I will be right back.

19 THE CLERK: Government's Exhibit 4 and 4-B, pre-
20 viously marked for identification, now marked in evidence.

21 (Recess taken.)

22 DIRECT EXAMINATION

23 BY MR. BARLOW: (continued)

24 Q Agent Tsotsos, the first time that you met the
25 defendant Ernest LaPonzina, when was that?

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A June 29, 1972.

Q And if you remember, can you tell us how that meeting came about?

A I had telephoned Mr. Gentile on June 27, and I asked him if he would give me Mr. LaPonzina's telephone number so I could call him myself and make my own appointment, and Mr. Gentile said, "I can't remember Mr. LaPonzina's telephone number, but I will make the appointment for you."

I said, "How about this afternoon?"

He said, "No, Mr. LaPonzina and I have to go somewhere together," and we made it for the 29th in the morning.

Notes fl 14

(continued on next page.)

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Tsotsos - direct

DIRECT EXAMINATION

BY MR. BARLOW: (Cont.)

Q Do you remember the place where the meeting had been arranged?

A Yes, at the Rocket of New York.

Q Did you in fact go to the Rocket of New York on the 20th?

A Yes, I did.

Q Would you tell us what you did, if anything, before you went there?

A Well, again I had gone first to the office of the Regional Inspector where they equipped me with a body transmitter.

Q What, if anything, did they do with the transmitter before they put it on you?

A Well, it was turned on and taped on the "on" position and they also searched me and made me take everything out of my pockets and counted whatever money I had and again searched my automobile.

Q Where did you go from the office of the Regional Inspector that date?

A We went to our usual predetermined area in the vicinity of the Rocket of New York, where the Inspector turned on the tape recorder in the trunk of my car.

Q And from there where did you proceed?

2 A To the Pocket of New York.

3 Q Can you tell us who was there, if anyone, when
4 you got to the Pocket of New York?

5 A Mr. Gentile and Mr. LaPonzina.

6 Q Now, can you tell us what you talked about
7 initially?

8 A Well, I told Mr. LaPonzina that I was con-
9 ducting an investigation -- criminal tax investigation of
10 his 1969, 1970 tax years and I asked him who had prepared
11 his returns and what information he submitted in connection
12 with that --

13 Q By the way, did he indicate who prepared his
14 returns?

15 A Yes, he said Mr. Vincent Lucadana.

16 Q Continue.

17 A I asked Mr. LaPonzina questions regarding
18 his personal history, his employment, banks, brokerage accounts,
19 real estate, loans and I asked him also to explain if he
20 could the difference between what he reported and what his
21 expenditures were, which at that time --

22 Q By the way, had you taken anything with you
23 that day?

24 A I had taken his original tax returns for the
25 years 1969 and 1970.

1
2 Q Do you remember anymore specifically what
3 you asked Mr. LaPonzina about his employment?

4 A Well, his return indicated that he was self-
5 employed --

6 MR. KLEIN: I will object to that. That is
7 rank hearsay. The returns are the best evidence.

8 THE COURT: Yes, that is hearsay.

9 Q Without telling us what was on the tax return
10 of Mr. LaPonzina, what did you ask him about?

11 A I asked him about his employment with Town
12 House Furniture Company.

13 Q What, if anything, did he reply?

14 A He said he didn't know what I was talking about.
15 Then he asked me whose return is that and I showed it to
16 him again and he identified his signature.

17 Q What, if anything, did Mr. Gentile say to
18 that?

19 MR. KLEIN: I will object to anything dealing
20 with Mr. LaPonzina's tax return.

21 This is not a tax case.

22 THE COURT: This has nothing to do with a tax
23 case.

24 MR. BARLOW: Your Honor, could we have a short
25 side bar for a second?

1 and the tapes. But certainly the portions that have
2 been already ruled out are out.

3 THE COURT: No question about that.

4 Bring the jury in.

5 (The jury entered the jury box.)

6 N I C H O L A S T S O T S O S , having been previously
7 duly sworn, resumed and testified further as follows:

8 THE COURT: Good morning, ladies and gentlemen.

9 DIRECT EXAMINATION

10 BY MR. BARLOW (Continued):

11 Q Agent Tsotsos, you realize you are still under
12 oath?

13 A Yes, I do.

14 Q I believe yesterday afternoon we had left off
15 in your testimony after you were at the meeting with
16 Mr. Gentile on August 3, 1972. Again, just to bring it into
17 perspective, what if any meeting was discussed between you
18 and Mr. Gentile on August 3, 1972?

19 A He had arranged for me to leave with Mr. La Pon-
20 zina on August 8th.

21 Q On August 8, 1972 did you go to the Rocket of
22 New York?

23 A Yes, I did.

24 Q What if anything did you do before you went
25 there that day?

1
2 A Well, again, I first had gone to the office of
3 the Regional Inspector where they again equipped me with a
4 radio transmitter which I wore under my clothing and again
5 they had me take the money out of my pockets and they counted
6 it and listed the currency and coins. They also searched
7 my automobile.

8 Q By the way, if you know, when did they turn the
9 transmitter on that day?

10 A In the office of the Regional Inspector they
11 turned it on and they taped it into the on position.

12 Q After this and the Inspector searched your car,
13 can you tell us where you went that day?

14 A We drove to the predetermined area in the vicinity
15 of the Rocket of New York where they turned on the tape recorder
16 that was in the trunk of my car.

17 Q From that rendezvous point where did you proceed?

18 A To the Rocket of New York.

19 Q Can you tell us what happened when you got there,
20 sir?

21 A I walked into the office, the door was unlocked
22 and the office was empty. I stayed there for a few minutes
23 and then walked back out onto the street. I looked up the
24 block and I saw Mr. La Ponzina standing about three car lengths
25 up the block on the driver's side of the car and he waved me

1
2 over to his car.

3 Q What did you do then, sir?

4 A I walked up the block and I got into the car
5 next to him.

6 Q Did Mr. La Ponzina indicate to you why he was
7 there that day?

8 A Yes. He said: "Joe said you wanted to see me."

9 MR. SCHETTINO: If your Honor please, I am sure
10 your Honor will instruct the jury any reference to
11 Mr. Gentile in a conversation he is not present is not
12 binding on him.

13 THE COURT: It is not binding.

14 Q What was your reply, if any?

15 A I said, "I wanted to know, Ernie, what your
16 intentions were," and he said, "Whatever you and Joe spoke
17 about, no problem."

18 I said, "Well, I am not sure what you mean," and he
19 gestured by rubbing his thumb and forefinger together in this
20 way (indicating).

21 MR. BARLOW: Let the record indicate Agent
22 Tsotsos is doing that with his right hand.

23 MR. KLEIN: Let the record indicate Agent
24 Tsotsos has been using hand gestures throughout his
25 entire testimony for the last few days throughout his

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A Well, Mr. La Ponzina asked me if perhaps I wanted to meet with Mr. Gentile that day, and if so, he would call him, see if he was Rand Records. And we left the car and went into the Rocket of New York where Mr. La Ponzina placed the telephone call.

Q If you know, was he able to talk to Mr. Gentile that day on the phone?

A No.

Q What if anything happened? Did Mr. -- what if anything else did Mr. La Ponzina do in Rocket of New York that day?

A He gave me two cards.

Q I hand you Government Exhibit 24 for Identification and I ask you whether you can identify this.

A Yes. This is one of the cards he gave me.

Q What if anything did Mr. La Ponzina do with the card?

A He took the card off Mr. Gentile's desk and he wrote on the back of it.

MR. KLEIN: I object. I am going to ask for the withdrawal of a juror and a declaration of a mistrial at this point. The prosecutor was admonished before in the absence of the jury and he is doing it now.

1 THE COURT: No, I will deny your motion.

2 In any event, the only portion of that card,
3 which he should state should be the back of it, nothing
4 else.
5

6 Q In any event --

7 THE COURT: Just disregard it. Completely
8 disregard what he just said.

9 Q In any event all Mr. La Ponzina did with the
10 card was to write on the back of the card, right?

11 A Yes. And give it to me.

12 Q Is this his writing on the back?

13 A Yes, it is.

14 MR. BARLOW: Your Honor, with that redaction,
15 the Government offers into evidence Government Exhibit
16 24 for Identification.

17 MR. KLEIN: I think the --

18 THE COURT: Just the back.

19 MR. BARLOW: Yes.

20 THE COURT: They will not see it at this time.

21 THE CLERK: Government Exhibit 24 previously
22 marked for Identification marked as Evidence as indicated
23 by the Court.

24 Q Now, during this conversation with Mr. La Ponzina,
25 Agent Tsotsos, did you say anything about your future?

1
2 A Yes. I told Mr. La Ponzina that I didn't expect
3 to work for the Internal Revenue Service much longer, that
4 I was going on the outside and practice accounting.

5 Q What if anything did Mr. La Ponzina reply?

6 A He said that he could get me a lot of clients.

7 MR. KLEIN: Again, I am going to ask for the
8 withdrawal of a juror here because this is not part of
9 a bribery case where we are throwing extraneous matters
10 in.

11 MR. BARLOW: I would ask that Mr. Klein reserve
12 his arguments out of the presence of the jury.

13 THE COURT: I will deny the motion, but I don't
14 think the testimony should come in.

15 MR. KLEIN: And please instruct the jury to
16 disregard it.

17 THE COURT: Disregard it.

18 Q Now, Agent Tsotsos, do you remember what hap-
19 pened at the very end of the conversation?

20 A Yes. I asked Mr. La Ponzina to again see if he
21 could reach Mr. Gentile.

22 THE COURT: May I make a statement at this
23 point.

24 You may have a problem because there are two
25 defendants' attorneys here who try their cases in the

1
2 Federal and State Courts. And I come from the State
3 Court. And in the State Court the attorney is entitled
4 to give up and state his reason in front of the jury
5 as a matter of law as to what he believes the law to
6 be. But objections made in a Federal Court, you don't
7 do that. You go to the sidebar and you make your
8 objection in private as to questions of law that may
9 be involved.

10 So that I really can't take him to task because
11 we are in both courts.

12 All right.

13 Q Was Mr. La Ponzina able to reach Mr. Gentile the
14 second time?

15 A No.

16 Q What if anything was discussed then about a
17 meeting with Mr. Gentile?

18 A Well, we made it final that I would meet
19 Mr. Gentile the following morning at 10 o'clock.

20 Q What did you do after you left the Rocket of
21 New York that day?

22 A I rendezvoused with the inspectors at 39th
23 Street between Sixth and Seventh Avenue.

24 Q From there where did you go?

25 A After they had turned off my transmitter and the

1 dated each bill. And Inspector King did the same thing in
2 my presence.
3

4 Q Do you remember how much money there was, Agent
5 Tsotsos?

6 A Yes. A \$1000.

7 Q And do you remember the denominations of the bills
8 and how many bills?

9 A Ten \$100 bills.

10 MR. KLEIN: May I have instruction at this time
11 that any monies that were paid in the absence of Mr.
12 LaPonzina are not binding on Mr. LaPonzina?

13 MR. PARLOW: Your Honor, the Government would ob-
14 ject to that instruction.

15 THE COURT: I will at this time reserve on the
16 instruction you asked to give to the jury.

17 But I will permit him to continue. I will make
18 my ruling at a later time.

19 Q Agent Tsotsos, can you take the items contained
20 in Government Exhibit 25 for identification out, look at them,
21 and tell us whether you can identify them?

22 A Yes. This is the money.

23 Q How can you identify them?

24 A My initials and dates appear on each bill.

25 Q What date is that?

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2 Take 1AM

3 Reel 2

4 IR:jb

THE COURT CLERK: Jury note marked as Court

Exhibit Number 5.

THE COURT: What's the date?

5 MR. BARLOW: Is -- that would be August 9,
6 your Honor.

7 THE COURT: August 9.

8 Who's it between?

9 MR. BARLOW: Mr. Gentile and Agent Tsotsos.

10 (The jury enters the courtroom
11 at twelve-thirty P.M.)

12 THE COURT: Your request has been found on the
13 August 9th, and it's Mr. Gentile and Mr. Tsotsos.

14 (The tape is played for the jury.)

15 THE COURT: Any time you wish to stop, you may
16 stop.

17 THE FOREMAN: Oh, yes, we understand that, sir.

18 THE COURT: That's it. All right. Now just
19 stay one minute, please. I just found out now I am
20 going to order sandwiches for lunch for you rather than
21 have you go out for lunch. That way, you can con-
22 tinue deliberating.

23 He'll give you a menu and then you can select
24 what you want. The marshalls will give you a menu.

25 (The jury leaves the courtroom.)

1 THE CLERK: Jury note marked as Court Exhibit
2 number 6.

3 THE COURT: The Jury has reached a verdict.
4 All right, bring in the Jury.

5 (Whereupon, the Jury entered the courtroom.)

6 THE CLERK: Mr. Foreman, ladies and gentlemen
7 of the Jury, have you agreed upon a verdict?

8 THE FOREMAN: Yes. I have the decision right
9 here.

10 THE CLERK: What is your verdict?

11 THE FOREMAN: The verdict on Count 1, number 1,
12 Joseph Gentile, guilty.

13 Count 2, Joseph Gentile, guilty.

14 Count 3, Joseph Gentile and Ernest LaPonzina,
15 guilty.

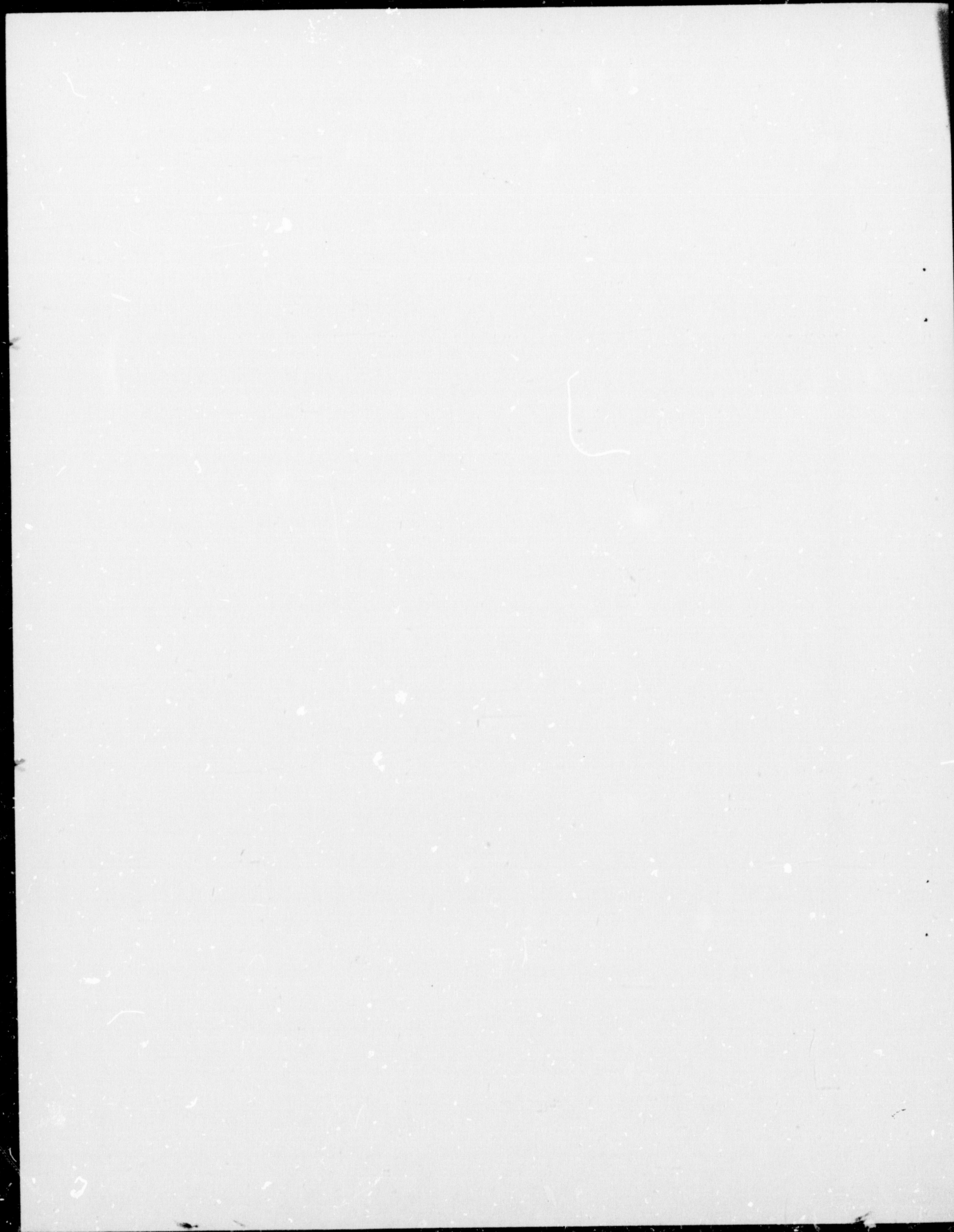
16 Count 4, Joseph Gentile and Ernest LaPonzina,
17 guilty.

18 THE CLERK: Ladies and gentlemen of the Jury,
19 as the Court has received your verdict, you find that
20 the defendants are guilty on all counts and so say you
21 all?

22 THE FOREMAN: Yes.

23 THE COURT: All right. Is that unanimous?
24 Do you wish the Jury polled?

25 MR. SCHETTINO: Yes.



August 29, 1975

Honorable A. Daniel Fusaro, Clerk
United States Court of Appeals
For The Second Circuit
New York, New York 10007

Joseph Gentile and Ernest LaPonzina v. United States
No. 75-1248 (C.A. 2)

Dear Mr. Fusaro:

Enclosed for filing are twenty-five (25) copies of the
Brief for Appellee and fifteen (15) copies of the Government's
Appendix in the above-entitled case.

Copies have this day been mailed to counsel for appellants.

Sincerely,

KIRBY W. PATTERSON,
Attorney for Appellee,
Criminal Division,
Department of Justice,
Washington, D.C. 20530

CC:

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